

IN THE CASE OF: ██████████

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230006183

APPLICANT REQUESTS: in effect, upgrade of his under honorable conditions (general) discharge due to disability. Additionally, he requests an appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 24 February 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, he takes full responsibility for failing a urinalysis for tetrahydrocannabinol (THC). Upon his return from deployment in 2019, he had a hard time adjusting to everyday life. He did not have proper access to resources to aid the transition from deployment, and he resorted to the use of THC. He referred himself to the Substance Use Disorder Clinical Care (SUDCC) when he realized he had a problem. He underwent a Medical Evaluation Board (MEB) for post-traumatic stress disorder (PTSD) but received a general discharge due to his actions.
3. The applicant enlisted in the Regular Army on 1 August 2017 for a 4-year period. The highest rank he attained was specialist/E-4.
4. The applicant deployed to Iraq in support of Operation Inherent Resolve from 5 January 2019 to 1 September 2019.
5. A DA Form 199 (Informal Physical Evaluation Board [PEB] Proceedings) dated

17 June 2021 shows the applicant was referred to the PEB for PTSD. The board determined the applicant was physically unfit and recommended placement on the temporary disability retired list (TDRL) with a disability rating of 50 percent (%). The applicant concurred with the findings.

6. The applicant was retired on 24 February 2022, in the rank/grade of private/E-2, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), Chapter 4, by reason of disability, combat related. His DD Form 214 confirms his service was characterized as under honorable conditions (general). He was credited with 4 years, 6 months, and 24 days of net active service. He was awarded or authorized the following:

- Army Achievement Medal
- Meritorious Unit Commendation
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Inherent Resolve Campaign Medal with one campaign star

7. The applicant's record does not contain documentation pertaining to the misconduct referenced in his application.

8. Regulatory guidance provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

9. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge, due to disability. The applicant asserts PTSD is a mitigating factor in his misconduct and request for upgrade.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the Regular Army on 1 August 2017.
- The applicant deployed to Iraq in support of Operation Inherent Resolve from 5 January 2019 to 1 September 2019.

- A DA Form 199 (Informal Physical Evaluation Board [PEB] Proceedings), dated 17 June 2021 shows the applicant was referred to the PEB for PTSD. The board determined the applicant was physically unfit and recommended placement on the temporary disability retired list (TDRL) with a disability rating of 50 percent (%). The applicant concurred with the findings.
- The applicant was discharged on 24 February 2022 under the provisions of AR 635-40, Chapter 4, by reason of disability, combat related. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code SEA and reentry code 4.
- The applicant's record does not contain documentation pertaining to the misconduct referenced in his application.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 293, his ABCMR Record of Proceedings (ROP), his DD Form 214, and some documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant has been medically retired secondary to being found unfit due to PTSD. He takes full responsibility for his behaviors, though asserts that when he came back from his deployment in 2019, he had a hard time adjusting back to everyday life. He noted he did not have access to resources to assist in the transition and resorted to using THC (records reflect he was offered support during his post deployment assessment). He noted that once he realized he had a problem he self-referred to SUDCC (substance use disorder clinical care) and the EBH (embedded behavioral health).

e. The applicant did have electronic health records (EHRs) available for review. He was seen for his post-deployment health assessment on 6 September 2019. He reported concerns to include sleep issues, no motivation, not wanting to be around others, racing heart, trouble concentrating, memory problems, easily annoyed or irritable, hard to make up mind, numerous physical ailments, and he reported experiencing the suicide of a fellow soldier while deployed and had to help get the body to Role I. He was diagnosed with problems of adjustment to life-cycle transitions. He was referred to behavioral health services. The applicant began engaging in ongoing mental health care in January of 2020 and was seen regularly until his discharge. His mental health engagement included individual care, group therapy, partial hospitalization, one psychiatric hospitalization (August 2020), case management, and medication management. From his initial assessment with SUDCC on 24 January 2022, the provider noted "...that the SM's use appears to be directly related to combat related

stressors as he states this helps with problems sleeping, feelings of detachment, and depersonalization.” The provider summarized his trauma related symptoms and made note that he was scheduled with an EBH provider to address these issues. He began psychiatric care/medication management on 4 March 2020. The applicant did not engage with therapy regularly until May 2020, due to missed appointments, family loss (wife’s miscarriage), and COVID-19. During his time in service, he was diagnosed with PTSD, adjustment to life-cycle transitions, cannabis abuse disorder – mild, and other problems related to employment.

f. The applicant has been engaged in care at the VA since his discharge from active duty in 2022, though his records reflect minimal mental health engagement thus far. He has been diagnosed with PTSD and adjustment disorder with mixed anxiety and depressed mood. Per the applicant’s VA EHR, he is 90% service connected, to include 70% for PTSD. Through review of Joint Legacy Viewing, this applicant did have “Community Health Summaries and Documents” available. The applicant’s records note anxiety depressive disorder, PTSD and sleep apnea.

g. After reviewing the application and all supporting documents, it is clear the applicant has a potentially mitigating condition (PTSD). However, this Agency Behavioral Health Advisor cannot provide an opine regarding an upgrade without documentation of the specific misconduct that led to his general, under honorable characterization of service.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant asserts PTSD mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, PTSD was present during his time of service, as evidenced by his medical retirement for PTSD and his service connection (70%).

(3) Does the condition or experience actually excuse or mitigate the discharge?
Unable to opine.

h. After reviewing the application and all supporting documents, this Agency Behavioral Health Advisor cannot provide a complete opine regarding potentially mitigating conditions or experiences without documentation of the specific misconduct that led to his general discharge. That said, the applicant was medically retired due to PTSD, and has a well-established history of PTSD symptoms being during his time in service, with a provider at the time noting that he appeared to be using to help manage

his trauma symptoms. Medical records also reflect that he was facing legal troubles with his unit due to failing numerous UA's due to marijuana use. However, there is insufficient (no) documentation to reflect that he was charged with any misconduct, nor to confirm why he received a general discharge. Of note, avoidance and self-medicating behaviors, such as substance use, are consistent with the natural history and sequelae of PTSD. There is a nexus between trauma symptoms and the misconduct that may have led to his characterization of service. While this advisor cannot fully render a determination on mitigation, if the board has come to the conclusion given the information available that his only misconduct was marijuana use, then this provider would recommend mitigation.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor.
3. The Board found insufficient evidence to support the decision that his character of service would be less than honorable. Considering that he was retired for disability—and had already received a reduction in grade due to his misconduct—the Board found any character of service less than honorable to be too harsh. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable.

2/12/2024

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CHAIRPERSON

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized

by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. Title 10, USC, Chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the Physical Disability Evaluation System (PDES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. The objectives of the system are to:

- maintain an effective and fit military organization with maximum use of available manpower
- provide benefits for eligible Soldiers whose military service is terminated because of service-connected disability
- provide prompt disability processing while ensuring that the rights and interests of the government and the Soldier are protected

b. Soldiers are referred to the PDES:

- when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a medical evaluation board
- receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board

- are command-referred for a fitness-for-duty medical examination
- are referred by the Commander, Human Resources Command

c. The PDES assessment process involves two distinct stages: the MEB and the PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retirement payments and have access to all other benefits afforded to military retirees.

d. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Army Regulation 635-40 establishes the Army disability system and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It provides for medical evaluation boards, which are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness). Paragraph 4-24b (3) provides that the final disposition, was based upon the final decision of the U. S. Army Physical Disability Agency or the Army Physical Disability Appeal Board. Personnel Command – Human Resources Command would issue retirement orders or other disposition instructions as follows: separation for physical disability with severance pay (Title 10 USC 1203 or 1206).

6. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is

appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. Only the honorable characterization may be awarded a Soldier for discharges under Chapter 4 or Chapter 12, for completion of a period ordered to active duty, or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//